IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05/12/2002

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA

W.P.NO. 1015 OF 1995 AND W.P.NO. 1016 OF 1995
and
W.M.P.No.1560 OF 1995

K.S.P. Dora .. Petitioner in both WPS

-Vs-

The Chairman & Managing Director,
Bharat Overseas Bank Limited,
7,Habeeb Tower,
756, Anna Salai,
Madras 600 002. .. Respondent in both WPs

Petition filed under Article 226 of the Constitution of India for the issuance of Writ of Certiorarified Mandamus as stated therein.

For Petitioner : Mr. N.G.R. Prasad

For Respondent : No Appearance

:J U D G M E N T

The facts in both the writ petitions being same, similar and inter-connected, both the writ petitions, which were heard together, are being disposed of by this common judgment.

2. Petitioner joined the respondent bank as Probationary Officer long back in 1975. In course of time he was promoted to various higher posts and ultimately in April, 1989, he was selected for Overseas assignment and posted at Bangkok. The petitioner availed of two days leave on 29th and 30th of April 1993 which was sanctioned by the superior officer, namely the Assistant General Manager at Bangkok. While on leave, the petitioner submitted his resignation with immediate effect. The petitioner also enclosed a demand draft for the amount representing 3 months pay. On 13.5.93, the petitioner was asked to handover charge and to report for duty at Head Quarters, that is to say, at Chennai. A letter was also received by him stating that resignation was not in conformity with Rule 13(i) of the Rules applicable to the bank and as such the resignation letter was rejected and subsequently the demand draft sent by the petitioner was returned. The petitioner sent a reply dated 24.5.93 reiterating that the rules do not

prohibit resignation with immediate effect by refunding three months pay in lieu of the notice. However, on 29.5.1993 a letter was again received by the petitioner wherein it was indicated that resignation was not accepted as it was not consistent with the Rules. Thereafter a charge memo was issued to the petitioner wherein it was indicated that the petitioner had absented himself without intimation, prior permission and failed to handover charge as directed by the superior authority and failed to report for duty at Head Office and had accepted gainful employment with other employer even though he was still continuing in service under the Bank and had over-stayed at Bangkok even after the order of transfer. The petitioner in reply submitted that while going on leave, he had already handed over charge and since he had resigned thereafter, there is no question of handing over charge once again. It was also indicated that since he had resigned with immediate effect, the question of remaining absent from duty did not arise. The other allegations relating to gainful employment overstay were denied. Subsequently, in August 1993, second charge-sheet was framed wherein inter alia it was indicated that the petitioner had not followed up the bills which had been dishonoured thus causing loss to the bank. The petitioner in his reply submitted that the monthly statement regarding return bills have been sent to Head Quarters regularly and the AGM was reviewing the overdue amounts every month and the petitioner had no responsibility in the matter. Subsequently on behalf of the bank letters were written to an organisation in Bangkok indicating that they had improperly employed the petitioner as the petitioner was not relieved from the respondent Bank. In October 1994, third charge-sheet was framed relating to some incidents which had occurred during 1993-94 and notice was issued regarding enquiry.

3. W.P.No.1015 of 1995 has been filed for quashing the charges framed against the petitioner and W.P.No.1016 of 1995 has been filed for quashing the letter dated 13.5.1993 rejecting the offer of resignation and for a further direction to the respondent Bank to settle the terminal benefits of the petitioner.

4. In spite of the notice, there is no appearance on behalf of the respondent and no counter affidavit has been filed.

5. The resignation letter of the petitioner with immediate effect had been rejected apparently on the ground that the same was not in accordance with Rule 13(i) of the Bank.

6. Learned counsel for the petitioner has produced a copy of service conditions of Bharat Overseas Bank Officers. It is necessary to notice some of the relevant provisions.
Chapter IV of the aforesaid compilation relates to appointment, seniority, promotions, termination of service, resignation, retirement and removal from service. Rule 4 of Chapter IV relates to termination of service and Rule 5 relates to resignation. Rule 5 is as follows :-

“ 5. RESIGNATION

i) An officer in the permanent establishment shall not resign

from the service of the bank without first giving a notice in writing of his intention to do so. The period of such notice required shall be three months and the notice shall be addressed to the Chairman.

Provided that the Chairman may at his discretion permit an officer to resign without such notice or reduce the period of such notice.

(ii) Notwithstanding anything to the contrary contained in clause (i)

(a) An officer against whom disciplinary proceedings are pending shall not resign from his service in his bank without the prior approval in writing of the Chairman; and

(b) Any notice of resignation given by such an officer before or during the disciplinary proceedings shall not taken effect unless it is accepted by the Chairman.

iii) For the purpose of this rule, disciplinary proceedings shall be treated as pending against an officer until final orders are passed on them if,

a) He has been placed under suspension.
OR
b) Any notice has been issued to him to show cause why disciplinary proceedings should not be initiated against him.
OR
c) Any charge sheet has been issued against him."

Chapter XI relates to terminal benefits. Rule 1 of Chapter XI relates to payment of provident fund. Rules 6 to 14 relate to payment of gratuity. Rules 8 & 9 are as follows :-

" . . .

8. TERMINATION OF SERVICE
If the service of any employee is terminated at any time he shall be aid a gratuity of 15 days salary for each completed year of service of the employee under the Bank subject, however, to a maximum of fifteen months' salary.

9. VOLUNTARY RETIREMENT OR RESIGNATION
If an employee voluntarily retires on completing the retirement age of fifty eight years or on the expiry of any extension of service granted to him or resigns from service after completing five years service, he shall be paid a gratuity of 15 days salary for each completed year of service of the employee under the Bank, subject however to a maximum of fifteen months' salary."

7. A perusal of the rules relating to termination makes it clear that the rules contemplate that there can be termination by issuing three months' notice or by paying three months' salary in lieu of such notice. Rules relating to resignation contemplate that an employee can resign by giving three months notice. The proviso, however, makes it clear that the Chairman has discretion to accept resignation even before completion of three months period. The other provisions in the Rule, however contemplate that an officer against whom disciplinary proceedings are pending, shall not be permitted to resign unless such resignation is accepted by the Chairman. It is also made clear that disciplinary proceedings shall be treated as pending against the officer until final orders are passed if, such an officer is placed under suspension or if, any notice had been issued to show cause why disciplinary proceedings should not be initiated or any charge sheet has been issued against any such officer.

8. In the present case, the petitioner had given his resignation letter with an intention to resign with immediate effect. The petitioner was under misconception that since three months notice had not been given, salary for three months should be refunded.

9. The question as to whether resignation is to be accepted with immediate effect is a matter of discretion of the Chairman, who can accept such resignation with immediate effect even though no prior three months notice is given. Even though there is discretion of the Chairman to accept the resignation with immediate effect or to refuse to accept such resignation, it is obvious that such discretion is to be exercised judiciously and not in an arbitrary or capricious fashion.

10. In the present case, the only reason for not accepting the resignation with immediate effect appears to be co-related with the action of the petitioner in giving demand draft representing three months pay and it has been indicated that such resignation is not contemplated under the rules. At the stage when the resignation letter was given by the petitioner, no disciplinary proceeding was pending against the petitioner or even contemplated and the disciplinary proceedings were initiated subsequently. The subsequent disciplinary proceedings initiated by the bank did not relate to any misfeasance or malfeasance on the part of the petitioner in the immediate past, but due to subsequent act of the petitioner refusing to rejoin at the head quarters. The subsequent supplemental charges relate to the incidents much prior to the date of resignation. It is obvious that the respondent thought of initiating disciplinary proceedings only because the petitioner, after his resignation was refused, had not joined the Head Quarters.

11. The only reason for not accepting the resignation is on the footing that the resignation seeking for immediate acceptance by refunding three months salary was not contemplated in the Rules. Even though such offer to refund three months salary was not contemplated, the rules had given discretion to accept any resignation with immediate effect even though prior notice had not been given. It is obvious from various correspondence that the

Chairman never considered the question of acceptance of resignation with immediate effect as contemplated in the proviso to the rule relating to resignation. Even assuming that the offer to return three months salary was not contemplated, nothing prevented the Chairman from considering the question as to whether the resignation should be accepted with immediate effect or not. Since there is no appearance and no counter affidavit has been filed, nothing is forthcoming as to why the resignation was not accepted. As already indicated at the time of giving the resignation, no disciplinary proceedings had been initiated nor even contemplated.

12. Keeping in view these aspects, I see no reason as to why the resignation should not have been accepted with immediate effect. The petitioner was on leave on 29 & 30.4.1993 and the resignation letter was dated 29.4.1993. In such view of the matter, it must be taken that if the petitioner had resigned and his service had come to an end with immediate effect from 30.4.1993 and the relationship of employer and employee should be deemed to have been severed from 1.5.1993. Once this conclusion is arrived at, the subsequent action of the bank in initiating departmental proceedings and framing charges against the petitioner must be taken to be illegal.

13. Even otherwise, the charges appear to be very trivial in nature and apparently a churlish reaction to the letter of resignation of the petitioner and the subsequent refusal to rejoin duty.

14. The next question is relating to payment of terminal benefits. The Rules which have been quoted indicate that even in case of termination of service an officer is entitled to terminal benefits. Having regard to the facts and circumstances of the case and keeping in view the provisions contained in the Rules relating to termination, it is a fit case where a direction is to be given to the bank to pay the terminal benefits to the petitioner treating the petitioner to have resigned with effect from 30.4.1993.

15. The petitioner has prayed for payment of interest. So far as payment of provident fund is concerned, the rule itself contemplates payment of interest as provident fund should be paid along with admissible interest. However, so far as payment of gratuity is concerned, I do not think it is a fit case where there should be any direction regarding payment of interest. The direction regarding payment of provident fund and gratuity as contemplated in the Rules should be complied with within a period of three months from the date of communication of the order.

16. Subject to the above directions, both the writ petitions are allowed. Since there is no appearance on behalf of the respondents, there shall be no order as to costs. Consequently, W.M.P.No.1560 of 19 95 is closed.

Index : Yes
Internet : Yes
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To

The Chairman & Managing Director,
Bharat Overseas Bank Limited,
7,Habeeb Tower,
756, Anna Salai,
Madras 600 002.

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